# In the Supreme Court of the United States

OCTOBER TERM, 1951

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No. 594

DAVID D. LEWIS AND JACKSON, RIVES AND PETTUS, PETITIONERS

*v.*

RAILROAD RETIREMENT BOARD

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA*

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

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### OPINION BELOW

The opinion of the Supreme Court of Alabama (R. 82) is unofficially reported in 54 So. 2d 777.

### JURISDICTION

The judgment of the Supreme Court of Alabama (R. 90) was entered on October 4, 1951. A motion for a rehearing was denied on November 23, 1951 (R. 92). By order of the Chief Justice dated February 14, 1952, the time for filing a petition for a

writ of certiorari was extended to March 15, 1952 (R. 94). The petition for a writ of certiorari was filed February 18, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

### QUESTION PRESENTED

Under Section 12(o) of the Railroad Unemployment Insurance Act, as amended (60 Stat. 741, 45 U.S.C. 362(o)), the Railroad Retirement Board is entitled to be reimbursed from any sum or damages recovered by an employee through suit, compromise, settlement, or judgment on account of an infirmity, to the extent of the benefits paid by the Board to the employee on account of such infirmity.

The question presented is whether the amount of reimbursement to which the Board is entitled should be reduced by the proportionate share of the costs and attorneys' fees incurred by the employee in recovering damages for his infirmity, even though the net amount recovered by the employee exceeds the reimbursement due the Board.

### STATUTE INVOLVED

Section 12(o) of the Railroad Unemployment Insurance Act, 52 Stat. 1107, as amended, 60 Stat. 741, 45 U.S.C. 362(o), reads as follows:

> (o) Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or

other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.

STATEMENT

This is an action arising out of a bill of interpleader brought by petitioner David D. Lewis against the Railroad Retirement Board, respondent, and the Louisville and Nashville Railroad Company, a cross-complainant in the lower court, asking the court to award a fund in controversy of $1213.25, in possession of the Railroad, to the petitioner or, in the alternative, if the court should hold that the Board has an interest in the fund, allow petitioner a proportionate share of the fund as reimbursement for attorneys' fees and other expenses incurred in obtaining the judgment from which the Board seeks reimbursement (R. 4-7). Petitioners Jackson, Rives and Pettus (hereafter sometimes referred to as intervenors) intervened (R. 23-25) claiming a portion of the above fund as legal fees and expenses incurred in the prosecution

of petitioner Lewis' suit which resulted in the judgment from which the Board seeks reimbursement. The Railroad company paid the amount in dispute into the registry of the trial court for its determination as to ownership and proper disposition (R. 16-17). The facts leading up to the dispute are as follows:

Petitioner Lewis was injured on February 25, 1948, while engaged in the discharge of his duties as foreman of a switching crew for the Louisville and Nashville Railroad Company (R. 4, 15, 68). Petitioner filed his application for sickness benefits under the Railroad Unemployment Insurance Act, 52 Stat. 1094, 45 U.S.C. 351, on March 2, 1948 (R. 11). Under the provisions of the Act, the Board began payments to petitioner on account of his injury dating from February 26, 1948 (R. 56). These payments continued with a brief interruption, provided by the Act, through September, 1949, with petitioner receiving a total of $1213.25 in benefits (R. 92-93). On August 13, 1948, the Railroad Retirement Board sent notice, as required by the Act, to the comptroller of the Louisville and Nashville Railroad Company that under Section 12(o) of the Act, the Board had a lien to the extent of its benefit payments to petitioner on any sum payable by the Railroad on account of liability based on petitioner's injuries (R. 18, 48).

On January 20, 1949, petitioner Lewis retained the firm of Jackson, Rives and Pettus,

intervenors below and petitioners here, with reference to employment as his attorneys in his civil action for personal injuries against the Louisville and Nashville Railroad Company (R. 29). Intervenors filed their complaint on behalf of petitioner on January 21, 1949 (R. 23). On October 3, 1949, a consent judgment in the sum of $37,500 was entered in favor of complainant and against the Louisville and Nashville Railroad Company in the Circuit Court for the Tenth Judicial Circuit of Alabama (R. 4-5). In response to an inquiry from the Louisville and Nashville Railroad Company requesting information concerning the amount of benefits paid by the Board to petitioner (R. 51), the Board, on October 13, 1949, advised the Railroad that the correct amount paid to petitioner was $1213.25 (R. 52).

Subsequent to the entry of judgment in the above civil action, the Louisville and Nashville Railroad Company paid to the Clerk of the Circuit Court for the Tenth Judicial Circuit of Alabama the sum of $36,286.75, withholding $1213.25 from the total judgment of $37,500 because of the claim of the Railroad Retirement Board (R. 16, 34).[1] Petitioner Lewis then filed his bill of interpleader in equity, on January 13, 1950 in the Circuit Court of

[1] Intervenors distributed the $36,286.75 recovered by them from the Clerk of Court by deducting and paying to the firm $611.67 for expenses, by taking as a fee the sum of $8918.77 (25% of the difference between $36,286.75 and $611.67) and delivering the balance of the proceeds of $26,756.31 to petitioner Lewis (R. 38, 43-44).

Jefferson County, Alabama, asking for disposition of the disputed sum in his favor (R. 4). The Louisville and Nashville Railroad Company paid the sum into the registry of the Circuit Court of Jefferson County of Alabama for proper disposition (R. 17).

After hearing testimony by respondent and intervenor as to their rights to the disputed sum, the Circuit Court held that neither petitioner nor intervenors had any right, title or interest in the $1213.25 and that the entire sum is payable to the Railroad Retirement Board (R. 72-73). On appeal, the Supreme Court of Alabama affirmed (R. 82).

## ARGUMENT

Petitioner Lewis and the intervenors raise two arguments in support of their contention that they have a right to attorneys' fees and expenses from the sum due the Railroad Retirement Board as reimbursement for the benefits paid petitioner Lewis. First, they contend that the administrative policy of the Board discriminates against the seriously injured employee, and secondly, that intervenors are entitled to reasonable attorneys' fees and other expenses because they were "incurred in the recovery of money for the benefit of the Railroad Retirement Board" (Pet. p. 10). Both arguments misconstrue the policy of the Board and the nature of the Board's right to reimbursement.

1. Under Section 12(o) of the Railroad Unemployment Insurance Act, *supra*, pp. 2-3, the Board

is entitled to reimbursement in the event a third party is held liable for inflicting the disability upon which a claim for sickness benefits is predicated, "to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity."[2] In determining the net amount inuring to the benefit of the individual from a personal injury settlement or recovery, the Board deducts medical, hospital and legal expenses incurred by him in connection with the infirmity from the total amount of the settlement or recovery. The Board considers itself entitled to reimbursement only from the net amount. However, if the net amount is as much as, or more than, the amount of the benefits which it has paid, the Board must, according to the provisions of Section 12(o) of the Act, be reimbursed in the full amount of the benefits.

The application of these principles to the instant case is clear. Judgment was entered for $37,500, an amount greatly in excess of all medical, hospital and legal expenses, and the net amount inuring to the benefit of petitioner Lewis is considerably

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[2] In commenting on the intended application of Section 12(o), the Senate Report on the amendments to the Railroad Unemployment Insurance Act which added the Section stated:

> The fact that a third party may be liable to the employee for inflicting the disability upon which a claim for sickness benefits is predicated does not affect the validity of the claim for benefits, but the Board is entitled to reimbursement from any payment in discharge of such liability to the extent of the sickness benefits paid under these circumstances, and upon notice to the person liable obtains a lien securing its right of reimbursement. [Sen. Rept. 1710, Part 2, p. 25, 79th Cong., 2d Sess.]

more than the amount of the benefits he recovered from the Board. The Board is therefore entitled to reimbursement in the full amount of the benefits.

The administrative policy of the Board is applicable equally to all injured employees. Each employee can deduct medical, hospital and legal expenses from the amount of his personal injury recovery before arriving at a net amount from which the Board will receive its reimbursement. The policy insures the right of each employee to legal expenses before the Board applies its lien.[3] Petitioner's and intervenors' argument that the policy of the Board is discriminatory is completely unsupported.

2. Petitioners' second argument, that the injured employee is paying the attorneys' fees and other expenses incurred in the recovery of money for the benefit of the Railroad Retirement Board (Pet. p. 10), is equally misleading. Their argument is based on the false proposition that there are two funds in the instant case, one for the benefit of the injured employee and a second for the benefit of the Board. There is, however, only a single fund of $37,500. Petitioner Lewis and the inter-

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[3] In the instant case, petitioner's contingent fee legal contract with intervenors awards intervenors 25% of the amount petitioner actually receives (R. 45). If petitioner and intervenors were to prevail in the instant case, petitioner would realize nothing out of the additional recovery. Petitioner does not have to "dip into his share of the recovery," as intervenors suggest (Pet. p. 13), to enable the Board to be reimbursed for the benefits paid petitioner. nor would he profit from intervenors' construction.

venors have not created a separate fund for the benefit of the Board but rather a single fund from which they are exacting a fee and from which the Board is to be reimbursed. The litigation by petitioner was for the sole purpose of creating the single fund of $37,500 and was in no way for the benefit of the Board. As the court below stated (R. 89):

> The services rendered by the attorneys in the suit in which the judgment against the railroad company was procured were services rendered in behalf of a client, the complainant in the cause, and his individual interest under a contract made only between complainant and intervenors. It was not a service rendered in behalf of the Railroad Retirement Board, although it resulted incidentally in benefit to the Railroad Retirement Board. As a result of the views which we have here expressed, the allowance of a fee cannot be sustained on a theory of services rendered for the common benefit of all the parties.

Petitioners' entire argument that they created a fund for the benefit of others and that the Board should share in the expense of its creation overlooks the relationship between the parties in this case. Here, the complainant was the recipient of benefits administered by the Board which the law required him to reimburse. The action resulting in the judgment from which the reimbursement was made, was an action in a law court and not in

equity. It was not a receivership; nor was it filed in aid of or in connection with an equity proceeding. The benefit recovered by the Board from the civil suit instituted by petitioner was only incidental to that suit and is not a basis for charging a fee. *Standard Lumber Co.* v. *Interstate Trust Co.*, 82 F. 2d 346 (C.A. 5), certiorari denied, 299 U.S. 545; *Huff* v. *Bidwell*, 195 Fed. 430 (C.A. 5); *Lea* v. *Paterson Sav. Inst.*, 142 F. 2d 932 (C.A. 5). Petitioners had no authorization to represent the Board and at no time undertook to do so.[4]

The cases cited by petitioners to support their contention are applicable to the right of attorneys' fees incurred in the administration of a trust. But here, as the court below stated (R. 89), "The suit brought by complainant against the Louisville and Nashville Railroad Company was not in any sense a class suit or brought for the benefit of others. The complainant sought only to establish his own rights. The incidental benefit resulting to the Railroad Retirement Board is not a basis for charging the Railroad Retirement Board with the creation of a fund for its benefit."[5]

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[4] In *Lea* v. *Paterson Sav. Inst.*, 142 F. 2d 932, 934 (C.A. 5), the Court of Appeals for the Fifth Circuit, in denying an application for attorneys' fees, stated: "But it [the rule for allowing attorneys' fees] is only so applied when the circumstances are such as that parties sought to be held liable for fees can be said to have either expressly or impliedly accepted the attorneyship and its benefits."

[5] In the court below, intervenors urged that their attorneys' lien preceded the Board's lien, and was, for that reason, superior to it. The court below held against intervenors, and they do not press that argument here.

CONCLUSION

The decision of the court below is clearly correct. There is no conflict of decisions and further review is not warranted. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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